

### **Objections to Claims 66 and 67**

Applicants thank the Examiner for pointing out the need to amend Claims 66 and 67 for proper dependency. Subject matter of Claims 66 and 67 has been incorporated in Claims 18 and 44. Claims 66 and 67 are now canceled.

### **Claim Rejections under 35 USC 112, Written Description**

Claims 18-19, 25, 28-29, 33-36, 44, 49-53, and 66-69 have been rejected as failing to meet the written description requirement.

The Office contends that “*ipt* genes from organisms other than *Agrobacterium* were known only after the filing date of the parent application, and therefore were not in Applicants’ possession at the time of filing.” (O.A. dated 6-16-07, page 3)

Applicants respectfully assert that *ipt* genes were identified in *Arabidopsis* in 2001 (Takei, *et al.*, *J. Biol. Chem.* 276:26405-26410) and in *Petunia* in 2002 (Zubko, *et al.*, *Plant J.* 29(6):797-808) and therefore were known to one of skill in the art as of the filing date of this application. In an effort to advance prosecution, Applicants have amended the claims to specify that the constructs and methods comprise an *ipt* gene isolated from *Agrobacterium*, *Arabidopsis*, or *Petunia*.

In light of the remarks and amendments made herein, Applicants request that all rejections as to written description be withdrawn.

### **Claim Rejections under 35 USC 112, Enablement**

Claims 18-19, 33-35, 44, 50-52, and 66-69 have been rejected as failing to meet the enablement requirement. The Office contends that “Applicants do not define a ‘meristem-preferred’ promoter.”

Claims 18 and 44 have been amended to recite the promoter limitations of Claim 49. All other pending claims are dependent therefrom; therefore the rejection is obviated.

### **Claim Rejections under 35 USC 102, Anticipation**

Claims 18-19 and 44 have been rejected under 35 USC 102(b) as anticipated by Amasino, *et al.*, (5,689,042).

The claims have been amended and the rejection is obviated.

Claims 18-19, 33 and 50 have been rejected under 35 USC 102(e) as anticipated by Martineau (6,329,570).

The claims have been amended and the rejection is obviated.

### **Claim Rejections under 35 USC 103, Obviousness**

Claims 18-19, 33-35, 44, 50-52, and 68-69 have been rejected under 35 USC 103(a) as being unpatentable over Martineau (1995, U.S. Patent Number 6,329,570 B1) taken with Gardner, *et al.* (1997, NCBI Accession Number V00140).

Claims 18 and 44 have been amended to obviate the rejection. All other claims rejected for obviousness depend from these two claims, and thus the rejection has been fully overcome.

### **Rejection – Double Patenting**

Claims 18-19, 25, 28-29, 33-37, 44, and 49-54 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent Number 6,992,237 B1.

Upon allowance of claims in the present application, a terminal disclaimer to the commonly-owned patent will be executed by the Applicants.

In view of the above amendments and remarks, Applicants respectfully submit that all grounds for rejection have been overcome and that the claims as amended are in condition for allowance.

The Commissioner is hereby authorized to charge the payment of any fees under 37 C.F.R. §1.20(a) concerning this transaction, if they should be deemed applicant's mistake, or to credit any overpayment, to Deposit Account No. 16-1852.

Respectfully submitted,

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